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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Modulus Global Incorporated,
 	
       Plaintiff,
 	
v.
 	
Quintzy FZE LLC, et al.,
 	
       Defendants.
	No. CV-22-01457-PHX-GMS
	
	ORDER

Before the Court is Defendants Quintzy FZE LLC, Bloxeo Technology, Inc., Ankit Singhal, and Rajeev Sharma's Motion to Dismiss Counts IV, VI, VII, VIII, IX, and XI for failure to state a claim (Doc. 32). For the following reasons, the motion is granted in part and denied in part.

BACKGROUND

In this case, Modulus Global, Inc. ("Plaintiff") has sued various defendants for conduct related to misappropriating its source code and other documents. Plaintiff is a provider of proprietary enterprise fintech products. It alleges that it began developing a digital currency exchange in 2018, and by Fall 2018, it needed to develop a digital assets exchange and blockchain payment solution. To do so, Plaintiff allegedly executed two agreements with software company Efficacious, and its owner Ankit Singhal. The agreements, among other things, required Singhal to "devote his entire business time, attention, and efforts to the performance of his duties under [the] Agreement" and to "not

1   engage in any other employment." (Doc. 8 at 2-3.) Singhal also allegedly agreed to

2   develop and write code for the Modulus software and that any software developed "would

3   be the sole and exclusive property of Modulus." (Doc. 8 at 3.)

4   Plaintiff alleges that after the agreements, Singhal used the underlying source code

5   that he developed for Modulus in developing the Quintzy Spot Exchange Software and/or

6   Quintzy Derivatives Exchange that offers crypto exchange products in direct competition

7   with Modulus at a cheaper cost. Plaintiff claims that Singhal and/or Quintzy offered these

8   products to Modulus's existing or prospective clients. As a result, Plaintiff brought claims

9   for breach of contract, misappropriation of trade secrets under Arizona and federal law,

10 civil conspiracy to commit trade secret theft, breach of duty of loyalty, breach of fiduciary

11 duty, trespass to chattels, intentional interference with a business expectancy, unfair

12 competition and false designation of origin under the Lanham Act, false advertising under

13 the Lanham Act, and common law unfair competition and trademark infringement.

DISCUSSION

I.   Legal Standard

16   To survive dismissal for failure to state a claim pursuant to Federal Rule of Civil

17 Procedure 12(b)(6), a complaint must contain more than a "formulaic recitation of the

18 elements of a cause of action"; it must contain factual allegations sufficient to "raise a right

19 to relief above the speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555

20 (2007). When analyzing a complaint for failure to state a claim, "[a]ll allegations of

21 material fact are taken as true and construed in the light most favorable to the nonmoving

22 party." *McShannock v. JP Morgan Chase Bank NA*, 976 F.3d 881, 886-87 (9th Cir. 2020).

23 However, legal conclusions couched as factual allegations are not given a presumption of

24 truthfulness. *Pareta v. F.D.I.C.*, 139 F.3d 696, 699 (9th Cir. 1998). "A district court may

25 dismiss a complaint only if it fails to state enough facts to state a claim to relief that is

26 plausible on its face." *McShannock*, 976 F.3d at 887 (quoting *Twombly*, 550 U.S. at 570).

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II.   Analysis

A. Preemption (Counts IV, VI, VII, VIII)

Arizona's Uniform Trade Secrets Act ("AUTSA") creates an exclusive cause of action—and displaces conflicting causes of action—for claims based on the misappropriation of trade secrets. *Orca Commc'ns Unlimited, LLC v. Noder*, 337 P.3d 545, 546 (Ariz. 2014); A.R.S. § 44-407. The Arizona Supreme Court has explained that A.R.S. § 44-407 "displaces only conflicting tort claims for 'misappropriation' of a 'trade secret,' terms AUTSA specifically defines, and leaves undisturbed claims 'that are not based on misappropriation of a trade secret.'" *Orca*, 337 P.3d at 547. In *Orca*, the Arizona Supreme Court held that § 44-407 does not broadly displace all common-law claims for misuse of confidential information that does not fall within AUTSA's definition of a trade secret. *Id.* Because the Plaintiff's claim was not limited to trade secrets, but also based on unfair competition from learning "confidential and trade secret information about Orca," it was not preempted. *Id.* at 546, 548. The *Orca* Court specifically acknowledged that the AUTSA does not include the uniformity directive included in the Uniform Trade Secrets Act and adopted by other states. 337 P.3d at 549. As such, it did not feel compelled to follow other courts' views. *Id.*

Because the AUTSA does not preempt claims that may be outside the scope of the AUTSA's definitions of "misappropriation" and "trade secret," the question is whether any of the claims that Defendant seeks to dismiss as preempted may encompass conduct or information beyond "misappropriation of trade secrets."

Breach of Duty of Loyalty, Breach of Fiduciary Duty, and Trespass to Chattels: As pleaded, these claims could cover broader conduct or information than misappropriation of trade secrets. The breach of duty claims are based not only on Singhal's conduct related to the Modulus source code, but also his conduct in failing to return and safeguard other documentation and related software. To the extent these claims are based on misappropriation of trade secrets, they are, of course, preempted. However, whether information constitutes a trade secret is a question of fact. *Gordon Grado M.D., Inc. v.*

1   *Phoenix Cancer & Blood Disorder Treatment Inst. PLLC*, 603 F. Supp. 3d 799, 809 n.4

2   (D. Ariz. 2022). Because, as pleaded, these claims could plausibly encompass information

3   or broader conduct than that created under the trade secret definition, the claims cannot be

4   entirely preempted at the motion to dismiss stage.

5   *Civil Conspiracy to Commit Trade Secret Theft:* The civil conspiracy to commit

6   trade secret theft claim, however, appears exclusively based on misappropriation of a trade

7   secret. As pleaded, this claim appears directed only at trade secrets and does not encompass

8   any conduct or information beyond the source code. Plaintiff does not explain what, if any,

9   facts relevant to this claim fall outside the scope of the AUTSA's definitions for

10   "misappropriation of a trade secret." The claim refers exclusively to actions taken with

11   regard to Modulus's trade secrets. (Doc. 1 at 33-34.) At oral argument, while Plaintiff

12   highlighted the aspects of the three previously discussed claims that fell outside the scope

13   of the AUTSA, it did not include any information relevant to this claim. Because no aspect

14   of this claim extends beyond "misappropriation of a trade secret," it is preempted.

15   **B. Intentional Interference with a Business Expectancy (Count IX)**

16   The motion to dismiss is denied as to the intentional interference with a business

17   expectancy claim because Plaintiff has properly pleaded all elements of the claim. The

18   elements for an intentional interference with a business expectancy claim are: (1) existence

19   of a business expectancy; (2) knowledge of the expectancy on the part of the interferer;

20   (3) intentional interference inducing or causing a breach or termination of the expectancy;

21   (4) resultant damage to the party whose expectancy has been disrupted; and (5) improper

22   motive or means in the interference. *Miller v. Servicemaster by Rees*, 851 P.2d 143, 146

23   (Ariz. Ct. App. 1992). Defendant contends that Plaintiff has failed to allege the existence

24   of a valid business expectancy, actual loss or termination of the expectancy, or resultant

25   damage.

26   Modulus alleges the existence of a valid business expectancy by identifying a class

27   of clients with which it claims Quintzy and Singhal interfered with business. Modulus also

28   specifically identifies a valid business expectancy in existing client, Bitsmo. (Doc. 1 at 4.)

1 Modulus also generally alleges a business expectancy in its current and prospective clients.

2 This alone is sufficient to satisfy the first element, especially in light of Singhal's

3 familiarity with Modulus and its clients. *See, e.g.*, *Stoyanof v. Crocodiles Not Waterlilies,*

4 *L.L.C.*, 2012 WL 1302485, at *10 (D. Ariz. Feb. 16, 2022) (finding that an expectancy "in

5 the animation industry" was sufficient to meet the business expectancy element); *True*

6 *Freight Logistics LLC v. Global Tranz Enters. Inc.*, 2019 WL 11840292, at *4 (D. Ariz.

7 Jan. 11, 2019) (finding an assertion that defendant interfered with business of existing

8 customers sufficient, "given [Plaintiff's]] claim that [Defendant] was aware of the entities

9 with whom [Plaintiff] did business").

10   Plaintiff also properly alleges causation.   Modulus must allege intentional

11 interference inducing or causing a breach or termination of the expectancy. Plaintiff

12 plausibly does so, stating "upon information and belief, the underlying source code for the

13 Quintzy Derivatives Exchange was previously developed, programmed and built during

14 Singhal's engagement under the 2018 Agreement" and "Quintzy has offered for sale and/or

15 sold the Quintzy Spot Exchange Software and/or the Quintzy Derivatives Exchange to

16 various prospective clients and/or actual clients of Modulus." (Doc. 1 at 13.) This alleges

17 that Singhal and/or Quintzy sold the allegedly misappropriated products to the class of

18 clients in which Modulus had a business expectancy. The causation element is further

19 alleged where Plaintiff states, "Singhal and/or Quintzy intentionally interfered with these

20 prospective deals that Modulus was negotiating relating to spot and derivatives exchanges"

21 and "[t]he result is that the prospective deals for the software were disturbed." (Doc. 1

22 at 41.)

23   Lastly, the loss of current and potential clients "supports an inference that [Modulus]

24 was damaged." *True Freight*, 2019 WL 11840292, at *4. Although Defendant claims that

25 "all Plaintiff does is allege it lost business," the Complaint specifically states that "the

26 prospective deals for the software were disturbed through the improper action on the part

27 of Singhal and/or Quintzy." (Doc. 1 at 41.) While these allegations are perhaps not as

28 detailed as they could be, the allegation that Singhal and Quintzy sold the misappropriated

1 products to existing or prospective customers and that improper conduct disturbed

2 prospective deals, at the very least, supports an inference that Modulus was harmed by

3 Singhal and/or Quintzy's conduct. That is sufficient to survive a 12(b)(6) motion.

C. False Advertising (Count XI)

5 The motion to dismiss is granted with leave to amend as to the false advertising

6 claim. Plaintiff has not provided sufficient factual meat to the bones of the False

7 Advertising claim. It is true, as Plaintiff notes, that the General allegations provide some

8 information from which at least some of the elements of an False Advertising claim could

9 be considered to be alleged. But there is not, in this court's judgment at least at this point,

10 sufficiently clear factual allegations as to some of the elements, to make the claim

11 plausible. False advertising under the Federal Lanham Act requires pleading (1) a false

12 statement of fact by the defendant in a commercial advertisement about its own or another's

13 product; (2) the statement actually deceived or has the tendency to deceive a substantial

14 segment of its audience; (3) the deception is material, in that it is likely to influence the

15 purchasing decision; (4) the defendant caused its false statement to enter interstate

16 commerce; and (5) the plaintiff has been or is likely to be injured as a result[,] either by

17 direct diversion of sales from itself to defendant or by a lessening of the goodwill associated

18 with its products. *Skydive Ariz., Inc. v. Quattrocchi*, 673 F.3d 1105, 1110 (9th Cir. 2012).
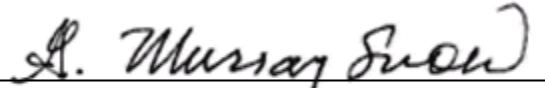
19 It is not clear whether the heightened pleading standard under Rule 9 applies to false

20 advertising claims. But, even accepting all of the Plaintiff's alleged facts as true, Plaintiff

21 has not sufficiently alleged what harm has resulted from alleged false statements and/or

22 proximate cause between false statements and such harm. Deficiencies in a complaint

23 cannot be supplied by allegations in the Response on a motion to dismiss. The False

24 Advertising claim (Count XI) therefore is dismissed with leave to amend the claim within

25 thirty days of the date of this Order.

26 **IT IS THEREFORE ORDERED** that Defendants' Motion to Dismiss Counts IV,

27 VI, VII, VIII, IX, and XI for failure to state a claim (Doc. 32) is **GRANTED** in part and

28 **DENIED** in part. It is granted with respect to Counts IV and XI only. It is denied in all

1   other respects.

2   **IT IS FURTHER ORDERED** granting Plaintiff leave to amend Count XI – False

3   Advertising of the Complaint within thirty days of the date of this Order.

4   Dated this 20th day of September, 2023.

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6   G. Murray Snow
7   Chief United States District Judge

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